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Mazzone v. Texas Roadhouse, Inc. Appellant's Reply Brief Dckt. 39337

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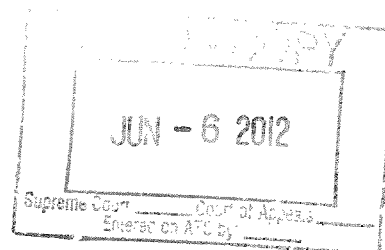
IN THE SUPREME COURT FOR THE STATE OF IDAHO

MATTHEW MAZZONE,)
)
Appellant/Claimant,)
)
vs.)
)
TEXAS ROADHOUSE, INC.,)
)
Employer,)
)
and)
)
HARTFORD INSURANCE COMPANY)
OF THE MIDWEST,)
)
Surety,)
)
Respondents/Defendants)
_____)

APPELLANT'S REPLY BRIEF

I.C. No. 2005-12469

Docket No. 39337-2011



APPEAL FROM

THE IDAHO INDUSTRIAL COMMISSION

HONORABLE LADAWN MARSTERS

REFEREE PRESIDING

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COMES NOW, Appellant, Matthew Mazzone, and hereby submits the following reply brief:

I.

REBUTTAL ARGUMENT

A.

**THE COMMISSION'S CONCLUSION THAT DR.
ENRIGHT'S OPINION WAS MORE CREDIBLE THAN
THE OPINION OF CLAIMANT'S TREATING PHYSICIAN
WAS NOT SUPPORTED BY THE RECORD,
SUBSTANTIAL OR COMPETENT EVIDENCE.**

Respondent argues that the Referee's decision is supported by substantiated and competent evidence based on Dr. Enright's psychological opinion and the Referee's [general] but unsubstantiated belief that Dr. Enright's opinion was more credible than that of Mr. Mazzone's treating psychiatrists since Dr. Enright tested Mr. Mazzone and reviewed pre-injury medical records. (Respondents Brief p. 1-2, par. 2, L. 13-17)

The referee's finding in this regard is not supported by specific, substantial or competent evidence for a number of compelling reasons. The test results were actually favorable to Mazzone. Dr. Enright administered the Patient-Related Anxiety Scale, MMPI-2 (Minnesota Multi Personality Index) test, Cognitive Status Exam and TOMM scale which revealed that: (1) Mr. Mazzone's picture of his psychological and emotional state would require immediate institutional intervention, (2) Mr. Mazzone's cognitive functioning attention, concentration, and understanding is marginal, and (3) his testing did not indicate malingering. (See Defendant's Exhibit 32 p. 480-481).

Institutional intervention actually occurred twice including one stay in 2008 and another stay in 2010. Claimant's treating physician, Dr. Ostrum testified that claimant was hospitalized for

lengthy stays in 2008 and 2010 for suicidal thoughts, depression and "ongoing issues with the post traumatic stress disorder." (Dr. Ostrum depo. p. 7, L. 15-25; p. 8, L2-13).

Claimant's cognitive functioning, attention, and concentration have been adversely affected by his depression and PTSD. Claimant suffers intrusive recollections and frequent nightmares relating to his traumatic burn injury. Dr. Ostrum describes claimant's symptoms including intrusive thoughts, problems concentrating, and nightmares reliving his traumatic burn injury and changes in his affective responsiveness on a daily basis. (Id. p. 11, L. 5-11; Claimant's exhibit H, p. 1). According to Dr. Ostrum, claimant is severely impaired, suffering a marked decline of function since the injury. His ability to function has been impaired by approximately 70%. (Id. p. 19, L 7-14; p.22, L13-20; P. 23, L2).

These test results were not given by Dr. Enright as a basis for his opinion that claimant does not have PTSD. Dr. Enright arrived at this opinion not based on the testing, but upon his own subjective perception. Although it has been said that Dr. Enright reviewed claimant's medical records, Dr. Enright said he could not identify any accident as the cause of Mr. Mazzone's PTSD symptoms since Mazzone did not articulate an accident or traumatic event in the manner which Dr. Enright was use to. (ME Dep. p. 127, L. 22-25). However, claimants burn injury treating physician, Dr. Saffle, MD, Professor of surgery, and Director of the Burn Center at the University of Utah Hospital opined in specific reference to claimant's burn injury that:

"Post Traumatic Stress Disorder is well known to occur following burn injuries and is not necessarily related to the size of the injury, and the symptoms which are described in Mr. Mazzone's last clinical notes seem to be consistent with that diagnosis...Based on descriptions contained in his chart...Mr. Mazzone has a very severe case of PTSD..."

(Claimant's Exhibit A, p.1, p. 2-90).

Dr Thurman definitely noted claimants burn injury. (Chart exhibit B, p.2, 11-21-05). Dr Brock's recorded a chart note of a "serious burn on his arm" (Chart exhibit C, p.11/12-19-05). Department of Health and Welfare, Regional Behavioral Health Service records vividly reveal claimant's burn injury, as well as nightmares, depression, anxiety, and stress relating to the burning. (Claimant's Exhibit D, p.14/10-05-2007). Dr. Murdock particularly describes claimants traumatic burn injury and the severity of symptoms triggered by his work injury. (Claimants Exhibit F, p.1, 1-30-2008; p. 2-10; Dr. Murdock Dep. p. 8, L. 14-20; p. 13, L. 7-25; p. 14-L. 1-25; p. 15, L. 14-16; R. 75). Dr. Ostrum clearly identified claimant's burn injury as the cause of PTSD. (Claimant's Exhibit H, p. 1-2).

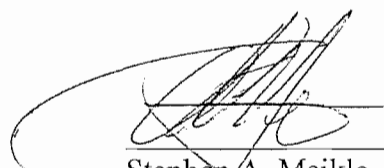
Mazzone's post injury medical records clearly and repeatedly refer to Mr. Mazzone's horrible burn accident injury as the traumatic event triggering the PTSD he suffers from. Dr. Enright's opinion or credibility are not supported in any manner by the recorded medical evidence or the testing he performed.

II.

CONCLUSION

The opinion of Dr. Enright and the Commission's reliance on his opinion are not supported by substantial or competent evidence. Accordingly, the Commission's decision should be reversed.

DATED this 54 day of June, 2012


Stephen A. Meikle
Attorney for claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 11th, 2012, I served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mailing, with correct postage thereon, or by causing the same to be hand delivered.

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